

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

2:00-cr-0564-GEB-KJM-P

vs.

SANTOS AYON RIVAS,

Movant.

ORDER

_____/

Movant, a federal prisoner proceeding pro se, has timely filed a notice of appeal of this court's October 10, 2006 denial of his motion under Federal Rule of Civil Procedure 60(b)(1) for relief from the March 27, 2006 order denying his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

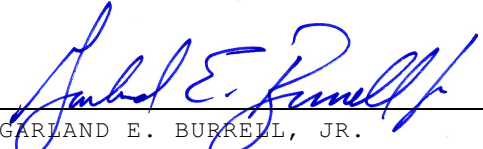
Where, as here, the motion was dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it

1 debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of
2 reason would find it debatable whether the petition states a valid claim of the denial of a
3 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
4 McDaniel, 529 U.S. 473, 484 (2000)).

5 After careful review of the entire record herein, this court finds that movant has
6 not satisfied the first requirement for issuance of a certificate of appealability in this case.
7 Specifically, there is no showing that jurists of reason would find it debatable whether movant's
8 motion was a successive motion to vacate his sentence. Accordingly, a certificate of
9 appealability should not issue in this action.

10 IT IS SO ORDERED.

11 Dated: November 20, 2006

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14 GARLAND E. BURRELL, JR.
United States District Judge